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DEPARTMENT OF EDUCATION

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A, Subchapter A

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CFDA Number: 84.412A.

Final Requirements--Race to the Top--Early Learning
Challenge; Phase 2

AGENCIES: Department of Education and Department of Health
and Human Services.

ACTION: Final requirements.

SUMMARY: The Secretary of Education and the Secretary of
Health and Human Services (hereafter "the Secretaries")
announce requirements for Phase 2 of the Race to the Top--
Early Learning Challenge (RTT-ELC) program. In Phase 2, we
will make awards to certain States that applied for, but
did not receive, funding under the RTT-ELC competition held
in fiscal year (FY) 2011 (FY 2011 RTT-ELC competition).
Specifically, we will consider eligible the five highest
scoring applicants that did not receive funding in the FY
2011 RTT-ELC competition, each of which received
approximately 75 percent or more of the available points

under the competition. We take this action to fund down the slate of the FY 2011 RTT-ELC competition and to establish the information and assurances that the five eligible applicants will need to provide in order to receive funding under Phase 2 of the RTT-ELC program.

EFFECTIVE DATE: These requirements are effective [INSERT DATE 30 days after PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Deborah Spitz, U.S.

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If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of This Regulatory Action: The U.S. Departments of Education and Health and Human Services (hereafter "the Departments") will implement Phase 2 of the RTT-ELC program by funding down the slate from the FY 2011 RTT-ELC competition. Specifically, the Departments will make awards available to the next five highest scoring applicants that did not receive funding under the FY 2011 RTT-ELC competition. Because the amount of available funds

in FY 2012 is limited, this action establishes specific requirements that the five eligible applicants must meet in order to receive up to 50 percent of the funds they requested in their FY 2011 RTT-ELC applications.

Summary of the Major Provisions of this Regulatory Action: In this document, we establish a limited number of application requirements, assurances, and budget requirements that the five eligible applicants must meet in order to receive funds under Phase 2 of the RTT-ELC program.

The Application Requirements, which can be found in section III of the Final Requirements section, require each eligible applicant to: (1) describe how it would implement the activities proposed in Core Area B (selection criteria one through five) of its FY 2011 RTT-ELC application; (2) describe how it would implement the activities proposed in Competitive Preference Priority 2 of its FY 2011 RTT-ELC application; and (3) from two or more of the three Focused Investment Areas (C, D, and E) in its FY 2011 RTT-ELC application, select activities proposed in response to one or more selection criteria. The Application Requirements section further explains how applicants may make adjustments to the scope of the activities they proposed in their FY 2011 RTT-ELC applications to ensure that the

activities can be carried out successfully with the amount of funds available in Phase 2 of the RTT-ELC program.

The Application Assurances, which can be found in section IV of the Final Requirements section, include a set of assurances for eligible applicants to include in their applications for Phase 2 RTT-ELC awards. These assurances relate to commitments made in the FY 2011 RTT-ELC applications. For example, in order to receive a Phase 2 RTT-ELC award, an eligible applicant must update the information in tables 1-13 in section (A)(1) of its FY 2011 RTT-ELC application, which described State funding, programs, and policies that supported early learning at the time the FY 2011 application was submitted. Each eligible applicant must maintain the commitments made in section (A)(1) in a manner consistent with the updated tables. Each eligible applicant must also maintain commitments to engage in the partnerships described in its FY 2011 RTT-ELC application in a manner consistent with the updated tables. These commitments are critical to building strong State systems of early learning and development. This requirement is important because the strength of these commitments influenced how reviewers scored the FY 2011 RTT-ELC applications during the FY 2011 peer review process.

The Budget Requirements, which can be found in section V of the Final Requirements section, require that an eligible applicant complete a revised budget and narrative that includes an explanation of why the eligible applicant has selected the activities it proposes to carry out (as described under "Application Requirements") and why those activities would have the greatest impact on advancing its high-quality plan for early learning.

Costs and Benefits: We have determined that these requirements will not impose significant additional costs to States, the eligible applicants under the RTT-ELC program, or the Federal Government and that the potential benefits will exceed the costs. The Departments believe States will incur minimal costs in developing plans and budgets for implementing selected activities from their FY 2011 RTT-ELC proposals because such planning will entail only revisions to existing plans and budgets already developed as part of the FY 2011 RTT-ELC application process.

Purpose of Program: The purpose of the RTT-ELC program is to improve the quality of early learning and development and close the achievement gap for children with high needs. This program focuses on improving early learning and development for young children by supporting States'

efforts to increase the number and percentage of low-income and disadvantaged children, in each age group of infants, toddlers, and preschoolers, who are enrolled in high-quality early learning and development programs; and to design and implement an integrated system of high-quality early learning and development programs and services.

Program Authority: Sections 14005 and 14006, Division A, of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), as amended by section 1832(b) of Division B of P.L. 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and the Department of Education Appropriations Act, 2012 (Title III of Division F of P.L. 112-74, the Consolidated Appropriations Act, 2012) (hereafter "the Department of Education Appropriations Act, 2012").

We published a notice of proposed requirements (NPR) for this program in the Federal Register on June 20, 2012 (77 FR 36958). The NPR contained background information and our reasons for proposing the particular requirements and assurances for Phase 2 of the RTT-ELC program.

There are two significant differences between the requirements proposed in the NPR and these final requirements. First, in this notice, the Departments have clarified that applicants may make reductions and

adjustments in the activities in Core Area A(3)(a)(1), Core Area B, and Competitive Preference Priority 2 based on the 50 percent reduction in available Federal funding for Phase 2 of the RTT-ELC program. Second, the Departments are requiring applicants to explain any significant changes to the information provided in section (A)(1) that have occurred since submission of their FY 2011 applications, including updates to the information provided in tables 1-13 in section (A)(1) of their FY 2011 applications. These changes are described in greater detail below in the Analysis of Comments and Changes section.

Public Comment: In response to our invitation in the NPR, twelve parties submitted comments on the proposed requirements. In the following section, we summarize and provide responses to the comments we received. We group major issues addressed in these comments according to subject. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and any changes in the requirements since publication of the NPR follows.

Eligibility and Allocation of Funds

Comment: One commenter questioned why only the five States named in the NPR are eligible to apply and asked whether

other States might receive funds if the five eligible States do not apply.

Discussion: The NPR included a discussion of the reasons for limiting eligibility to the five States named in the NPR. When the Departments made FY 2011 RTT-ELC awards, we did not have sufficient funding to award grants to all high-quality applications. The Department of Education Appropriations Act, 2012 authorizes the Departments to make awards on the basis of previously submitted applications. In light of the fact that the amount of funds available in FY 2012 is inadequate to conduct a meaningful new competition, we have chosen to use the available FY 2012 funds to make awards to the next five highest scoring applications, each of which received approximately 75 percent or more of the available points under the competition. The Secretaries believe that supporting high-scoring applicants that did not receive funding under the FY 2011 RTT-ELC competition with FY 2012 funding will help build on the momentum from the FY 2011 RTT-ELC competition. Because we are funding down the FY 2011 slate and only limited funds are available, we are not opening eligibility to all non-funded applicants. If any of the five eligible applicants do not apply for funds, those funds that remain unawarded would be used to support grants made under the FY

2012 Race to the Top District competition. We would not make any remaining FY 2012 funds available to other unfunded applicants from the FY 2011 RTT-ELC competition.

Changes: None.

Comment: Two commenters recommended that the Departments establish a protocol to ensure that if any funds are not awarded to the eligible applicants, they can be recommitted to the other applicants. The commenters stated that all of the \$133 million available for RTT-ELC in FY 2012 should be used for "Early Learning Challenge purposes."

Discussion: As described previously, the Departments decided that if any of the five eligible applicants do not apply for funds, the funds will be used for awards in the FY 2012 Race to the Top District competition, which may support district-level reforms in early learning. Funds that are not awarded through RTT-ELC Phase 2 will not be made available to other unfunded applicants from the FY 2011 competition.

Change: None.

Modification of Activities

Comment: Three commenters requested clarification about the proposed requirement that Phase 2 RTT-ELC funds not be used for new activities and sought clarification of the difference between new activities, new strategies, new

tactics, and new goals. The commenters also suggested that reasonable modifications to proposed activities should be allowed due to activities that have occurred since States submitted their FY 2011 applications.

Discussion: Applicants must select key activities from their FY 2011 applications. Due to the 50 percent reduction in funding available under Phase 2 RTT-ELC, a State may adjust the scope of budget, timelines, or performance measures for those selected activities. In so doing, a State may, in fact, modify some strategies or tactics to complete an activity from its FY 2011 application in order to accomplish the goal specified in that application.

A State is not permitted, however, to use Phase 2 RTT-ELC funds for activities that were not included in its FY 2011 application because the applications of the five eligible States were reviewed, scored, and ranked through the Departments' FY 2011 RTT-ELC peer review process. It would therefore be inappropriate to allow applicants to introduce new activities in place of those activities that were proposed in their FY 2011 applications.

The Departments will provide technical assistance to applicants on what constitutes a "new activity" rather than an adjustment to the scope of an activity included in a

State's FY 2011 RTT-ELC application. For example, creating an entirely new project to address one of the selection criteria would be a new activity, while a change in the number of regions served or subgrants awarded would be an allowable adjustment. The adjustments may not significantly diminish the program's ability to improve access to high-quality early learning programs for children with high needs. In addition, when the scope of work is adjusted by targeting specific regions in a State, the activities must be consistent across those regions. In making these adjustments, the Departments strongly encourage eligible applicants to consider how to use other appropriate Federal, State, private, and local resources in order to maximize the impact of the investment of RTT-ELC funds. If we determine that a State's Phase 2 application proposes activities that were not included in its FY 2011 application, those activities will not be funded, and we will work with the State to make the necessary adjustments.

Changes: None.

Comment: One commenter asked for clarification of whether reductions and adjustments in scope, budget, timelines, and performance targets are permitted for Core Area A(3)(a)(1), Core Area B, and Competitive Preference Priority 2.

Discussion: The intention of the Departments is that applicants carry out the activities described in Core Area A(3)(a)(1), Core Area B, and Competitive Preference Priority 2. However, in light of the reduced funding levels, applicants may modify these activities with adjustments to their scopes, budgets, timelines, and performance measures.

Changes: The Departments have clarified this in the Application Requirements section of this document. Applicants may make adjustments in scopes, budgets, timelines and performance targets for activities in Core Area A(3)(a)(1), Core Area B, and Competitive Preference Priority 2.

Required Core and Focused Investment Areas

Comment: One commenter suggested that it might be preferable to allow applicants to focus only on one of the Focused Investment Areas rather than two or more.

Discussion: The Departments understand the request to narrow the focus areas since less funding will be available for each applicant but believe that eligible applicants will be able to implement important activities in at least two Focused Investment Areas. This program is designed to take a comprehensive approach to improving State systems of early learning, and all three Focused Investment Areas are

important to the success of that approach. We are not revising the requirement as suggested by the commenter because the option to select two of the three Investment Areas provides applicants with the flexibility to select those activities that they can effectively carry out with reduced funds, while at the same time maintaining the comprehensive nature of the program. Applicants will have flexibility within the Focused Investment Areas they select as to which selection criteria they want to implement. Furthermore, eligible applicants will have flexibility regarding the amount of funds they choose to allocate to each Focused Investment Area. Applicants must explain in their applications the Focused Investment Areas and the selection criteria they have chosen to implement and how the reduced funding amount will affect their implementation. In addition, the Departments strongly encourage eligible applicants to leverage other appropriate Federal, State, private, and local resources to support their selected activities.

Changes: We have revised paragraph (a) of the Budget Requirements section to reflect that the dedication of other sources of funding is an example of adjustments that would be described in the budget narrative.

Comment: One commenter suggested that all applicants be required to address Focused Investment Area D: "A Great Early Childhood Education Workforce."

Discussion: While workforce development is extremely important in building a high-quality State early learning system, the Departments chose not to require Focused Investment Area D for several reasons. First, the FY 2011 application did not give Area D a higher priority over Areas C and E, because the Departments believe that all three areas are important. Second, workforce issues are addressed under Core Area B. In fact, one of the reasons we are requiring applicants to address all of the selection criteria under Core Area B is that this section includes all the elements of a comprehensive early learning system, from standards, to workforce credentials, to parent engagement.

Changes: None.

Comment: One commenter stated that selection criterion B(4), which promotes access to high-quality early learning and development programs for children with high needs, should receive a high level of recognition and support in this competition.

Discussion: The Departments agree with the commenter that access to high-quality programs for children with high

needs is of critical importance. To that end, both the FY 2011 RTT-ELC application and the NPR emphasized improving early learning and development programs for children with high needs. Specifically, the NPR proposed that eligible applicants be required to address all of the selection criteria in Core Area B, which includes B(4), "Promoting access to high-quality early learning and development programs for children with high needs." We retain that language in these final requirements and will provide eligible applicants with technical assistance that emphasizes the importance of all criteria within Core Area B.

Changes: None.

Maintenance of State Commitments

Comment: Two commenters requested some flexibility in the proposed assurance that States maintain all of the commitments described in section (A)(1). The commenters expressed concern that holding States to section (A)(1) commitments could result in funds being reduced in other high-need areas, and requested clarification of the budgetary requirements of grantees with respect to this section.

Discussion: Applicants were judged in the FY 2011 competition based on the commitments described in those

applications, and we strongly encourage States to maintain those commitments. At the same time, we understand that this is a challenging time for many States due to budget reductions. For that reason, we have chosen to maintain Assurance (b) but have specified that the State will maintain, in a manner consistent with any updates to tables 1-13 in section A(1), its commitment to and investment in high-quality, accessible early learning and development programs and services for children with high needs, as described in section (A) (1) of its FY 2011 RTT-ELC application. We have added language requiring each applicant to explain any significant changes in section (A) (1) that may have occurred since its submission of the FY 2011 application.

Changes: The Departments have added language to the Application Assurances section that requires each applicant to explain any significant changes to section (A) (1) that may have occurred since the submission of its FY 2011 application, and to provide updates to tables 1-13 in section (A) (1).

Comment: Three commenters inquired whether the tables in section (A) (1) of the FY 2011 application would need to be resubmitted in the Phase 2 application.

Discussion: The NPR was silent on whether the tables in section (A)(1) would need to be resubmitted in the Phase 2 RTT-ELC application. However, in order to ensure we have comprehensive, accurate, and current information, and provide additional flexibility on Assurance (b), the Departments will need to know which parts of the tables in section (A)(1) have changed. Therefore, the Departments are requiring that States update and resubmit tables 1-5 in their Phase 2 applications. Also, if the State has made any significant changes to the commitments, financial investments, numbers of children participating, legislation, policies, practices, or other key areas of the program described in section (A)(1) of its FY 2011 application, it must submit an explanation of those changes, including updates to tables 6-13 from section (A)(1).

Changes: The Departments have added language to the Application Assurances section that requires applicants to submit an explanation of any significant changes to section (A)(1) that have occurred in the commitments, financial investments, numbers of children participating, legislation, policies, practices, or other key areas since their submission of the FY 2011 application, including

resubmission of tables 1-5 and, as needed, updating tables 6-13.

Additional Selection Criteria and Priorities:

Comment: Several commenters proposed adding or changing the selection criteria and priorities from the FY 2011 application. One commenter proposed adding a competitive preference priority for expanding programs to disadvantaged communities, including rural and isolated areas. One commenter proposed a new invitational priority for mandatory full-day kindergarten. One commenter proposed a selection criterion that focuses on the strength of a State's kindergarten readiness assessment as an alternative for States that do not have a kindergarten entry assessment. One commenter proposed that a selection criterion be added that would allow States to demonstrate the effect of reforms made during the year between the FY 2011 competition and Phase 2 RTT-ELC and that would score States on the progress made. One commenter recommended that we change the licensing and inspection requirement in Competitive Preference Priority 2 so that instead of awarding points to States that implement licensing and inspection systems that cover all programs that regularly care for two or more unrelated children for a fee in a provider setting, it would instead state a broader goal of

implementing a coordinated system of licensing and Tiered Quality Rating and Improvement System (TQRIS) tiers, supported by monitoring and inspection.

Discussion: These recommendations would impose new priorities or selection criteria that were not included in the FY 2011 application. The Department of Education Appropriations Act, 2012 specifically authorizes the Departments to make awards on the basis of previously submitted applications. This is the approach we have taken because the funding available in FY 2012 is inadequate to conduct a meaningful new competition. Because we are making awards on the basis of previously submitted applications, we will not be making changes to any of the priorities or selection criteria from the FY 2011 application.

Changes: None

Comment: Several commenters recommended new program requirements for Phase 2 RTT-ELC grantees. One commenter recommended that we require the five eligible applicants to serve more young children than the current baseline by revising assurance (b) to add "and increasing the numbers of high-need children served by local programs in the State during the grant period." One commenter recommended that the Departments add an assurance requiring that no less

than one-third of the grant funds be provided as subgrants to local programs to improve services and serve children with high needs. One commenter proposed a new requirement that applicants demonstrate significant LEA involvement in developing their applications.

Discussion: These recommendations would impose new program requirements on the eligible applicants that were not included in the FY 2011 application. For the reasons stated previously, the Departments are not changing any of the program requirements from the FY 2011 application.

Changes: None.

Comment: Two commenters recommended that if the Departments were to impose a maintenance-of-effort requirement for these grants, they should use language modeled on past maintenance-of-effort requirements that have appropriate waiver provisions.

Discussion: This program does not have a maintenance-of-effort requirement, and the Departments have not chosen to propose one. While there is no maintenance-of-effort requirement, funds awarded in Phase 2 RTT-ELC must be used to supplement, not supplant, any Federal State, or local funds for activities such as increasing access to and improving the quality of Early Learning and Development Programs.

Change: None.

Supplement, not Supplant

Comment: One commenter requested that language on the supplement-not-supplant requirement from the Executive Summary of the FY 2011 RTT-ELC NIA be added to the Phase 2 RTT-ELC NIA for FY 2012.

Discussion: The Program Requirements in the RTT-ELC NIA for FY 2011 stated that funds made available under an RTT-ELC grant must be used to supplement, not supplant, any Federal, State, or local funds that in the absence of the funds awarded under this grant, would be available for increasing access to and improving the quality of Early Learning and Development Programs. This requirement applies to all Phase 2 RTT-ELC awards. The Departments have included language about the RTT-ELC supplement-not-supplant requirement in the Phase 2 NIA and will include it in technical assistance provided to applicants.

Changes: None.

Grant Period

Comment: Two commenters requested clarification on the duration and flexibility of the grant period.

Discussion: Since the NPR stated that all requirements not otherwise specified were to be consistent with the FY 2011 application, the grant period will be up to four years.

Changes: None.

Contracts and Subgrants

Comment: One commenter requested clarification on whether contracting and subgranting would be allowable under these awards.

Discussion: The awarding of contracts has always been allowable under RTT-ELC. Initially, States were not permitted to subgrant funds under this program. However, the Department of Education Appropriations Act, 2012 specifically provided that a State may make subgrants to public or private agencies and organizations under the RTT-ELC program. Thus, contracting and subgranting are allowable uses of Phase 2 RTT-ELC funds. The Lead State Agency and Participating State Agencies may, consistent with the State's approved plan, distribute funds to localities and other entities through memoranda of understanding, interagency agreements, contracts, other mechanisms authorized by State procurement laws, or subgrants. As always, a State's laws and procedures govern subawards. P.L. 112-74 does not require grantees to make subgrants; it simply provides grantees with this additional mechanism for distributing RTT-ELC funds, so long as awarding subgrants is consistent with State law and does

not result in a change of the scope or objectives of the grant.

Changes: None.

Supporting Documentation

Comment: Three commenters inquired whether letters of support included in the FY 2011 application would need to be resubmitted.

Discussion: Applicants do not need to resubmit letters of support.

Changes: None.

General Comments

Comment: One commenter stated that Focused Investment Area D should comprehensively address the workforce pipeline and a system of supports for the early education workforce, including appropriate compensation, workforce recruitment, preparation, professional development (including facilitating the pursuit of further credits, degrees, and coursework), mentoring, and other technical assistance. The commenter also stated that Focused Investment Area D should foster the retention of educators, administrators, and education support professionals who possess postsecondary credentials in, and a deep understanding of, child development and specialized training in early childhood education. The commenter further suggested that

the program include sufficient resources to allow teachers and instructional assistants to obtain the requisite credentials without compromising quality of education and without increasing costs for families. Finally, the commenter suggested that this criterion encourage the maintenance of a strong core licensing and monitoring system that ensures the health and safety of children in all child care settings.

Discussion: As previously stated, the Department of Education Appropriations Act, 2012 specifically authorizes the Departments to make awards on the basis of previously submitted applications, and this is the approach provided for in these final requirements. As such, the Departments are not changing any of the program requirements, priorities, or selection criteria from the FY 2011 RTT-ELC application. However, the Departments note that the proposals described by this commenter are generally consistent with the requirements and definitions provided in Focused Investment Area D of the FY 2011 application. For example, the FY 2011 application included criteria that supported the establishment of a statewide system of credentials and degrees aligned with a Workforce Knowledge and Competency Framework, alignment of professional development opportunities with that Framework, increasing

access for educators to effective professional development, and policies and incentives to improve retention and career advancement. Core Area B addresses the importance of a high-quality plan for rating and monitoring early learning programs participating in the TQRIS.

Changes: None.

FINAL REQUIREMENTS:

The Secretary announces the following requirements for Phase 2 of the RTT-ELC program. Except where otherwise indicated in these final requirements, the applicable final requirements and definitions of key terms from the notice inviting applications, published in the Federal Register on August 26, 2011 (76 FR 53564), apply to the Phase 2 RTT-ELC application process.

I. Award Process: To receive a Phase 2 RTT-ELC award, an eligible applicant must submit--

(a) An application, consistent with its FY 2011 RTT-ELC application, that--

(1) Meets the application requirements described in the Application Requirements section; and

(2) Provides the assurances described in the Application Assurances section; and

(b) For review and approval by both Departments, a detailed plan and budget describing the activities selected

from its FY 2011 RTT-ELC application that would be implemented with Phase 2 RTT-ELC funding, in accordance with the Budget Requirements section.

Note: We encourage eligible applicants to partner with each other and currently funded RTT-ELC grantees in carrying out specific activities (such as validation of a State's TQRIS, implementation of longitudinal data systems, or development of a kindergarten entry assessment). Each eligible applicant may apply for Phase 2 RTT-ELC awards individually or as a member of a consortium (with other eligible applicants) under 34 CFR 75.127-129. A consortium can be formed only with other eligible applicants and requires a single application. A partnership can be described in the application of an individual State or a consortium and can include eligible applicants as well as currently-funded grantees. In any event, an eligible applicant must propose activities for Phase 2 of the RTT-ELC program that are consistent with its FY 2011 RTT-ELC application.

II. Eligibility Requirements: Eligible applicants for Phase 2 RTT-ELC awards are those States that applied for funding under the FY 2011 RTT-ELC competition and received approximately 75 percent or more of the available points but that did not receive grant awards under that

competition. Therefore, only the States of Colorado, Illinois, New Mexico, Oregon, and Wisconsin are eligible to apply for Phase 2 RTT-ELC awards.

III. Application Requirements: Eligible applicants must meet the following requirements to receive Phase 2 RTT-ELC awards:

(a) Each eligible applicant must describe how it would implement an organizational structure for managing the Phase 2 RTT-ELC grant that is consistent with the activities and commitments described in response to selection criterion A(3)(a)(1)¹ of its FY 2011 RTT-ELC application, and describe how it would implement the activities described in response to Core Area B (selection criteria one through five) of its FY 2011 RTT-ELC application using a Phase 2 RTT-ELC award. The FY 2011 RTT-ELC Core Area B criteria promote broad participation in the State's TQRIS across a range of programs, active and continuous program quality improvement, and the publication of program ratings so that families can make informed decisions about which programs can best serve the needs of their children. Specifically, in Core Area B of its FY

¹ The selection criteria from the FY 2011 RTT-ELC application can be found in the Notice inviting applications for the FY 2011 RTT-ELC competition, published in the Federal Register on August 26, 2011 (76 FR 53564) and at <http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/2011-412.doc> (pp. 26-74).

2011 RTT-ELC application, each applicant had to demonstrate that it had developed and adopted, or had a high-quality plan to develop and adopt, a TQRIS. In addition, each eligible applicant must also implement the activities it proposed under Competitive Preference Priority 2, including all early learning and development programs in the TQRIS.

(b) In addition to addressing the requirements in paragraph (a) of this section, each eligible applicant must select and describe how it will implement activities that it identified in its FY 2011 RTT-ELC application in response to Focused Investment Areas C, D, or E. The eligible applicant must select activities from two or more of the three Focused Investment Areas C, D, and E, and the activities must be responsive to one or more of the selection criteria under the Focused Investment Areas chosen by the applicant. (Eligible applicants may implement additional activities proposed under more than one selection criterion within each Focused Investment Area.) In determining which selection criteria to address given the amount of available funds under Phase 2 of the RTT-ELC program, each eligible applicant must give consideration to those activities that will have the greatest impact on improving access to high-quality early learning programs for children with high needs.

Note: In light of the reduced funding available, applicants may make adjustments in the scope of services provided to meet selection criteria in Core Area A(3)(a)(1), Core Area B, Competitive Preference Priority 2, and Focused Investment Areas C, D, and E. For example, an applicant may propose to serve fewer programs or regions of the State than it proposed to serve in its FY 2011 RTT-ELC application. The eligible applicant must provide a detailed explanation of its rationale for such adjustments and also must amend its targets in tables B(2)(c) and B(4)(c)(1-2) of the FY 2011 RTT-ELC application, as needed. The adjustments may not diminish the program's impact on improving access to high-quality early learning programs for children with high needs. In addition, if the scope of work is adjusted by targeting specific regions in the State, the activities must be consistent across regions. In making these adjustments, the Departments strongly encourage eligible applicants to consider how to use other appropriate Federal, State, private, and local resources to support their selected activities.

(c) In addition, each eligible applicant may implement the activities it proposed in response to the Invitational Priorities from its FY 2011 RTT-ELC application. Eligible applicants that wrote to

Invitational Priority 2 are encouraged to enter into public-private partnerships to the extent that doing so would augment total funds available for carrying out the activities described in their FY 2011 RTT-ELC applications.

Note: We encourage grantees to enter into consortia, where relevant, in order to maximize the use of available funds. Please refer to section (V) (b).

(d) The Departments will use Phase 2 RTT-ELC funding to support only those activities included in an eligible applicant's FY 2011 RTT-ELC application. Therefore, an eligible applicant must not include new activities in its Phase 2 RTT-ELC application.

(e) Each Phase 2 RTT-ELC application must include current signatures by the eligible applicant's Governor or an authorized representative signing on behalf of the Governor; an authorized representative from the eligible applicant's Lead Agency; and an authorized representative from each Participating State Agency.

(f) Each Phase 2 RTT-ELC application must include a newly-signed Memorandum of Understanding and a preliminary scope of work for each Participating State Agency.

IV. Application Assurances: Each eligible applicant must include in its Phase 2 RTT-ELC application the

following assurances from its Governor or authorized representative of the Governor of its State:

(a) While the State may make appropriate adjustments to the scope, budget, timelines, and performance targets, consistent with the reduced amount of funding that is available under the Phase 2 RTT-ELC award process, the State will maintain consistency with the absolute priority and meet all program and eligibility requirements of the FY 2011 RTT-ELC competition.

(b) The State must update tables 1-5 from section (A)(1) of its FY 2011 application. In addition, if the State has made any significant changes to the commitments, financial investments, numbers of children served, legislation, policies, practices, or other key areas of the program described in section (A)(1) of its FY 2011 application, it must submit an explanation of those changes, including updates to tables 6-13 from section (A)(1) as needed.

The State will maintain, in a manner consistent with its updates to tables 1-13, its commitment to and investment in high-quality, accessible early learning and development programs and services for children with high needs, as described in section (A)(1) of its FY 2011 RTT-ELC application.

(c) Subject to adjustments due to the reduced amount of funding available under the Phase 2 RTT-ELC award process, the State will maintain its plan to establish strong participation and commitment by Participating State Agencies and other early learning and development stakeholders as described in Section A(3) of its FY 2011 RTT-ELC application.

(d) The State will maintain its commitment to integrating and aligning resources and policies across Participating State Agencies as described in Section A(3) of its FY 2011 RTT-ELC application.

(e) The State will comply with all of the accountability, transparency, and reporting requirements that applied to the FY 2011 RTT-ELC competition. (See the notice inviting applications for the FY 2011 RTT-ELC competition, published in the Federal Register on August 26, 2011 (76 FR 53564).)

(f) The State will comply with the requirements of any evaluation of the RTT-ELC program, or of specific activities it proposes to pursue as part of the program, conducted and supported by the Departments.

V. Budget Requirements: An eligible applicant may apply for up to 50 percent of the funds it requested in its

FY 2011 RTT-ELC application. The following budget requirements apply to the Phase 2 RTT-ELC award process:

(a) Budget Narrative. Each eligible applicant must submit a detailed narrative and budget, using the format and instructions provided in the FY 2011 RTT-ELC application package, which describes the activities it has selected from its FY 2011 RTT-ELC application that it proposes to implement with a Phase 2 RTT-ELC award. This detailed narrative must include an explanation of why the eligible applicant has selected these activities and why the eligible applicant believes they will have the greatest impact on advancing its high-quality plan for early learning. The narrative must also explain where the applicant has made adjustments (such as, a reduction in the number of participating programs or areas of the State served, or the dedication of additional Federal, State, local, or private funds to support the plan) to ensure that the activities can be carried out successfully with the amount of funds available. In reviewing the narrative, we may request that the applicant submit revisions to address concerns related to feasibility or the strategic use of funds. (See the notice inviting applications for the FY 2011 RTT-ELC competition, published in the Federal Register on August 26, 2011 (76 FR 53564).)

(b) Applying as a Consortium. As discussed previously, we encourage eligible applicants to form consortia with each other or partner with currently funded FY 2011 RTT-ELC grantees in carrying out specific activities (such as validation of a State's TQRIS, implementation of longitudinal data systems, or development of a kindergarten entry assessment). Eligible applicants may apply individually or as members of a consortium (with other eligible applicants) under 34 CFR 75.127-129. A consortium can be formed only with other eligible applicants and requires a single application. A partnership can be described in the application of an individual State or a consortium and can include eligible applicants as well as currently-funded grantees. Each eligible applicant must propose activities consistent with its FY 2011 RTT-ELC application. Therefore, each eligible applicant that chooses to apply as a member of a consortium or to partner with a current RTT-ELC grantee in carrying out project activities must include in its revised budget narrative an explanation of how the activities to be undertaken by the consortium or partnership are consistent with the applicant's FY 2011 RTT-ELC application and how the consortium or partnership will help the applicant implement its selected activities. It is important to note

that an applicant may propose some activities that it would execute alone and others that it would execute as part of a consortium.

(c) Available Funds. The maximum amounts of funding for which each eligible applicant may apply are shown in the following table. The amounts in this table are based on the requirement that each eligible applicant may apply for up to half of the amount it requested in its FY 2011 RTT-ELC application.

State	Maximum Amount
Colorado	\$29,925,888
Illinois	\$34,798,696
New Mexico	\$25,000,000
Oregon	\$20,508,902
Wisconsin	\$22,701,389

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these requirements, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563:

Regulatory Impact Analysis

Under Executive Order 12866, the Secretaries must determine whether this regulatory action is "significant"

and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or local programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action will have an annual effect on the economy of more than \$100 million because the amount of government transfers through the Phase 2 RTT-ELC award process exceeds that amount. Therefore, this action is

"economically significant" and subject to review by OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits--both quantitative and qualitative--of this regulatory action and have determined that the benefits will justify the costs.

The Departments have also reviewed these requirements under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental,

public health and safety, and other advantages;
distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Departments believe

these requirements are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action will not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Federal Regulatory Action:

These requirements are needed to implement the Phase 2 RTT-ELC award process in the manner that the Departments believe will best enable the program to achieve its objectives -- to create the conditions for effective reform in early learning systems in States that had high-scoring applications in the FY 2011 RTT-ELC competition but that did not receive funding in that competition, so that they can implement key elements of their comprehensive reform proposals submitted as part of their FY 2011 RTT-ELC competition applications.

Potential Costs and Benefits:

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and

have determined that these requirements will not impose significant additional costs to State applicants or the Federal Government. Most of the requirements contained in this notice involve re-affirming State commitments and plans already completed as part of the FY 2011 RTT-ELC competition or other Federal education programs.

Similarly, other requirements, in particular those related to maintaining conditions for reform required under the FY 2011 RTT-ELC competition, require continuation of existing commitments and investments rather than the imposition of additional burdens and costs. The Departments believe those States that are eligible for Phase 2 awards will incur minimal costs in developing plans and budgets for implementing selected activities from their FY 2011 RTT-ELC competition proposals, because in most cases such planning will entail only revisions to existing plans and budgets already developed as part of the FY 2011 RTT-ELC application process and not the development and implementation of entirely new plans and budgets. In all cases, the Departments believe that the benefits resulting from the requirements for the Phase 2 RTT-ELC award process will exceed their costs.

Regulatory Alternatives Considered:

An alternative to promulgation of these requirements would have been to use FY 2012 Race to the Top funds to make awards to the one or two highest scoring unfunded applications from the FY 2011 RTT-ELC competition and to use the remaining funds for the Race to the Top District competition to be held in FY 2012. We concluded that approximately \$400 million in available FY 2012 funds is necessary to support a meaningful district-level competition.

Moreover, the Departments believe that simply funding the one or two highest scoring applicants that were not selected in the FY 2011 RTT-ELC competition would result in a missed opportunity to reward the efforts of other high-scoring applicants from that competition and to enable them to make meaningful progress on key elements of their State early learning plans.

Accounting Statement:

As required by OMB Circular A-4 (available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to States under this

program as a result of this regulatory action.

Expenditures are classified as transfers to States.

Accounting Statement Classification of Estimated
Expenditures

Category	Transfers
Annualized Monetized Transfers	\$132,934,875
From Whom To Whom?	Federal Government to States

The Phase 2 RTT-ELC award process will provide approximately \$133 million in competitive grants to eligible applicants (those five applicants that did not receive funding in the FY 2011 RTT-ELC competition, but which received approximately 75 percent or more of the available points under the competition).

Waiver of Congressional Review Act

These requirements have been determined to be a major rule for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, et seq.). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the Federal Register. Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued)

that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

These final requirements are needed to implement the Phase 2 RTT-ELC program, authorized under Sections 14005 and 14006, Division A, of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), as amended by section 1832(b) of Division B of P.L. 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and the Department of Education Appropriations Act, 2012, which was signed into law on December 23, 2011. The Department must award funds under this authority to qualified applicants by December 31, 2012, or the funds will lapse. Even on an expedited timeline, it is impracticable for the Department to adhere to a 60-day delayed effective date for the final requirements and make grant awards to qualified applicants by the December 31, 2012 deadline. When the 60-day delayed effective date is added to the time the Department will need to receive applications (approximately 45 days), review the applications (approximately 21 days), and finally approve applications (approximately 28 days), the Department will not be able to award funds authorized under

the Department of Education Appropriations Act, 2012 to applicants by December 31, 2012. The Department has therefore determined that, pursuant to section 808(2) of the CRA, the 60-day delay in the effective date generally required for congressional review is impracticable, contrary to the public interest, and waived for good cause.

Paperwork Reduction Act of 1995:

These final requirements contain information collection requirements. However, because the eligible applicants for Phase 2 RTT-ELC awards are fewer than 10, these collections are not subject to approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)(A)(i)).

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on

request to the program contact person listed under FOR
FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register is available via the Federal Digital System at www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of these Departments published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of these Departments published in the Federal Register by using the article search feature at www.federalregister.gov. Specifically,

through the advanced search feature at this site, you can limit your search to documents published by these Departments.

Dated: September 17, 2012

Deborah S. Delisle
Assistant Secretary for Elementary
and Secondary Education,
U.S. Department of Education.

George Sheldon
Acting Assistant Secretary for
Children and Families,
U.S. Department of Health and
Human Services.

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